IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.744 OF 2006

Bhagirathi Baliram Warang ...Appellants
Since deceased through heirs Orig.Def.

V/s.

Sambhaji Sadashiv Warang ...Respondent
Orig.Planff.

Mr.S.M. Railkar for Appellants.
Mr.Pradeep Gole for Respondent.

CORAM : V.M. KANADE, J.

DATED : 12th JULY, 2007.

P.C:-

1. Heard learned counsel for the Appellants and learned counsel for the Respondent.

2. Appellants who are the original defendants, take exception to the order passed by the lower Appellate Court whereby suit filed by the Respondent herein was partly decreed and Appellants/original defendants were restrained by perpetual injunction from dispossessing the Respondent/Plaintiff from the suit land otherwise than by due process of law.

3. Brief facts are that the Respondent herein filed suit for perpetual injunction against the Appellants/original defendants. He relied on entries made in the record of right and other documents which according to him established possession over the suit land. Appellants/Original Defendants on the contrary, relied on order passed by the Tahsildar, Kankavali U/s.70-B of the Bombay Tenancy and Agricultural Act which had by its order dated 31/05/1976 declared husband of Appellant No.1 to be tenant. The Trial Court dismissed the suit of the Respondent on the ground that the order passed by the Tenancy Court clearly established title of the Appellants herein and therefore, entries which were made in the record of right do not give any right to the Respondent. Lower Appellate Court, however, set aside said order and came to the conclusion that though declaration was issued by the tenancy authority in favour of the Appellants/Tenants, entries in the record of right established actual possession of the Respondent and therefore, it observed that it was open for the Appellants to file appropriate proceeding seeking possession of the property on the basis of order passed by Tahsildar

U/s.70-B of the Act.

4. Learned counsel for the Appellants submitted that it is well settled position of law that once declaration is issued U/s.70-B of the Act, declaring the Appellants to be Tenants of the suit premises, Defendant was not entitled to seek order of injunction since Appellants have been declared to be Tenants of the suit premises. He submitted that once it is established by documentary evidence on record that the Appellants were tenants, reliance could not have been placed by the Lower Appellate Court on the entries made in the record of rights.

5. It is not possible to accept the submissions made by the learned counsel for the Appellants. In the present case, admittedly when declaration was given by Tahsildar U/s.70-B of the Act no notice was issued by Respondent to the Plaintiff. In any event, entries in the record of right have establish that he is not in possession of suit land. It is always open for the Appellants herein to seek possession of the property land on the basis of order passed by the tenancy authority. Therefore, I do not see substantial question of law raised in the second

appeal. Second Appeal is accordingly, dismissed. C.A. is disposed of accordingly.

V.M. KANADE, J.